

ATTACHMENT 52

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: DA VINCI SURGICAL ROBOT
ANTITRUST LITIGATION

Lead Case No. 3:21-cv-03825-VC

CORRECTED EXPERT REPORT OF PROFESSOR EINER ELHAUGE

A handwritten signature in black ink, appearing to read "Einer Elhauge".

January 10, 2023

WITH ERRATA INCORPORATED

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3. Potential Entrants to Third-Party EndoWrist Repair Were Foreclosed Due to Intuitive's Exclusionary Restraints

277. There are many third-party medical device repair companies generally, showing that ISO repairs are a thriving part of the medical device sector. Intuitive's own market analysis identified multiple "key players."⁶⁵⁵ Many additional companies beyond Rebotix, Restore, and SIS would have had the connections and general expertise to enter the EndoWrist repair market if it were not foreclosed, as described below.

278. As an initial matter, in the absence of Intuitive's exclusionary conduct there would have been a profit motive to enter this market. Intuitive was earning high margins selling EndoWrist replacements (see Section II.E.2 above), and economic theory predicts that high margins generally induce entry.⁶⁵⁶

279. Stryker is an example of a potential entrant that was foreclosed due to Intuitive's exclusionary restraints. In December 2015, Stryker signed a proposal enter the market by acquiring Rebotix's S/SI EndoWrist assets "for a total potential consideration of US \$13.5 million."⁶⁵⁷ Stryker was and is a large competitor in aftermarkets for medical devices and instruments.⁶⁵⁸ However, by March 2016

EndoWrists. What about facilities? What facilities does Rebotix have for repairing X and Xi EndoWrists? A. Currently, the facility in Florida, which was used to – to do the Si instruments is capable of also doing Xi instruments. It still exists. The bulkier equipment that I discussed earlier, things like sterilization stations and fixtures for testing and that kind of thing, those still exist.”).

⁶⁵⁵ Scoville (in *Restore*) Dep., Exhibit 2 at Intuitive-00224006 (Stryker Solutions, IMS Ready – Steris, Stryker Sustainability, SterilMed – J&J, Medline, Aesculap, SpecialtyCare, Northfield – Formerly Prezio Health, Steris Mobile Solutions).

⁶⁵⁶ PINDYCK & RUBINFELD, MICROECONOMICS 377 (8th ed. 2013) (“Large short-run profits can induce new firms to enter an industry”); CARLTON & PERLOFF, MODERN INDUSTRIAL ORGANIZATION 116 (4th ed. 2005) (“In most markets, positive economic profits would attract new entrants.”).

⁶⁵⁷ Mixner (in *Rebotix*) Dep. Ex. 15 at REBOTIX139042 and at 74:22-25 (“Q Did Stryker make an offer to buy something? MR. ERWIG: Objection, form. THE WITNESS: They made a verbal offer to buy something, yes.”). See also, Gibson (Rebotix) Dep. at 101:10-21 (“Q What happened with regard to Stryker after that meeting? A They took some time, and I – I assume they discussed the project internally. And they got back to us and said they would like to do some due diligence.... And then eventually, they brought a team in to perform due diligence on our service process. Q When you say they brought a team in, what – where did that team come? A To our office in St. Petersburg, Florida.”).

⁶⁵⁸ For example, Stryker's “single-use medical device reprocessing and remanufacturing services produced a record-setting \$255 million in supply cost savings for its more than 2,500 hospital and